

## PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF FINAL RULEMAKINGET00-2, IN THE MATTER OF POTOMAC ELECTRIC POWER COMPANY'S  
PUBLIC SPACE OCCUPANCY SURCHARGE ELECTRICITY TARIFF, P.S.C.-  
D.C. No. 1

1. The Public Service Commission of the District of Columbia ("Commission") hereby gives notice, pursuant to Section 2-505 of the District of Columbia Official Code,<sup>1</sup> of its final rulemaking action taken in the above-captioned proceeding.

2. Pursuant to D.C. Official Code Section 10-1141.06,<sup>2</sup> the Potomac Electric Power Company ("Pepco") filed with the Commission an updated Rider "PSOS" - Public Space Occupancy Surcharge on February 6, 2009.<sup>3</sup> In the filing, Pepco shows the process to be used to recover from its customers the fees paid by Pepco to the District of Columbia Government for the rental of public structures in public space.<sup>4</sup> Specifically, Pepco proposes to amend the following tariff page:

**ELECTRICITY TARIFF, P.S.C.-D.C. No. 1  
10<sup>th</sup> Revised Page No. R-33**

3. According to its tariff, Pepco's surcharge rate for its Rider PSOS will be updated annually to be effective March 1 of each year.<sup>5</sup> In light of its tariff, Pepco states that its "updated Rider PSOS is to become effective with meter readings on and after March 1, 2009."<sup>6</sup> The updated Rider PSOS consists of two parts: 1) one component reflects the estimated payments made by Pepco to the District of Columbia for the current

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<sup>1</sup> D.C. Official Code § 2-505 (2006 Repl.).

<sup>2</sup> D.C. Official Code § 10-1141.06 (2008 Repl.), states that [e]ach public utility company regulated by the Public Service Commission shall recover from its utility customers all lease payments which it pays to the District of Columbia pursuant to this title through a surcharge mechanism applied to each unit of sale and the surcharge amount shall be separately stated on each customer's monthly billing statement.

<sup>3</sup> *ET00-2, In The Matter Of Potomac Electric Power Company's Public Occupancy Surcharge Electricity Tariff, P.S.C.-D.C. No. 1*, ("ET00-2") Letter to Dorothy Wideman, Commission Secretary, from Deborah M. Royster, Deputy General Counsel, re: *Rider "PSOS,"* filed February 6, 2009 (hereinafter referred to as "Rider PSOS").

<sup>4</sup> D.C. Official Code § 10-1141.04 (2008 Repl.).

<sup>5</sup> *ELECTRICITY TARIFF, P.S.C.- D.C No. 1*, 10<sup>th</sup> Revised Page No. R-33. The effective date is March 1, 2009.

<sup>6</sup> *ET00-2*, Rider PSOS at 1.

year, and 2) the other component reflects the over or under recovery from the prior year. The supporting calculations for the updated Rider PSOS illustrate a change from \$.00161 per kilowatthour to \$.00226 per kilowatthour, a decrease of 40.4 percent in the surcharge rate.<sup>7</sup>

4. The Commission issued a Notice of Proposed Rulemaking ("NOPR"), which was published in the *D.C. Register* on March 6, 2009, inviting public comment on the updated Rider PSOS.<sup>8</sup> No comments were filed in response to the NOPR. Subsequently, the Commission approved Pepco's Rider PSOS filing by Order No. 15289. A copy of Pepco's final Rider PSOS may be obtained by contacting Dorothy Wideman, Commission Secretary, Office of the Commission Secretary at 1333 H Street, NW, Suite 200, West Tower, Washington, DC 20005 or from the Commission's website at [www.dcpsc.org](http://www.dcpsc.org).

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<sup>7</sup> ET00-2, Rider PSOS at 2.

<sup>8</sup> 56 *D.C. Reg.* 1995-1996 (March 6, 2009).

## DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

NOTICE OF FINAL RULEMAKING

The Board of Directors (“the Board”) of the District of Columbia Water and Sewer Authority (“the Authority”), pursuant to the authority set forth in the Water and Sewer Authority Establishment and Department of Public Works Reorganization Act of 1996, effective April 18, 1996, as amended (D.C. Law 11-111, §§ 203(3), (5), and (6) and 205(a)(3) and (7); D.C. Code §§ 34-2202.03(3), (5), and (6) and 34-2202.05(a)(3) and (7)), and Board Resolution # 09-74 adopted at its regular meeting held on June 4, 2009, took final action to amend Title 21 of the District of Columbia Municipal Regulations (DCMR) Chapter 53, Water and Sanitation, District of Columbia Water and Sewer Authority Procurement Regulations and replace the current regulations with new regulations. The final rules amend and supersede the existing Procurement Regulations, located at 21 DCMR Chapter 53.

The Board expressed its intention to amend the 21 DCMR Chapter 53 at its regularly scheduled Board meeting on April 2, 2009 pursuant to Board Resolution # 09-47.

The Authority’s proposed rulemaking was published in the April 24, 2009 edition of the *D.C. Register* (56 DCR 003193). The Finance and Budget Committee met on May 28, 2009 to consider comments submitted during the thirty (30) day comment period of the proposed rulemaking. The Board after consideration of all comments received and the recommendations of the Finance and Budget Committee voted to proceed with the amendments to the Authority Procurements Regulations, Title 21 of DCMR, Chapter 53. No changes have been made to the substance of the proposed regulations. Typographical corrections were made, which do not substantially alter or change the intent, meaning, or application of the proposed rules.

This final rulemaking will be effective when published in the *D.C. Register*.

**21 DCMR Chapter 53, District of Columbia Water and Sewer Authority Procurement Regulations, is deleted in its entirety and replaced with the following new Chapter 53 to read as follows:**

**CHAPTER 53            DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY  
PROCUREMENT REGULATIONS**

Sections

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5301	General Provisions
5302	Full and Open Competition
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5304	General Standards of Ethical Conduct
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5381-5398	[Reserved]
5399	Definitions

**5300 Purpose and Governance**

- 5300.1 The District of Columbia Water and Sewer Authority Procurement Regulations (the “Regulations”) are issued by the Board of Directors (the “Board”) of the District of Columbia Water and Sewer Authority (the “Authority”) pursuant to the “Water and Sewer Authority Establishment and Department of Public Works Reorganization Act of 1996,” effective April 18, 1996 (D. C. Law 11-111; D.C. Code § 34-2201.01 *et seq.*), (the “Enabling Act”), to establish regulations for the procurement of goods and services, including construction.

**5301 General Provisions**

- 5301.1 The Regulations shall govern the procurement of goods and services, including construction.
- 5301.2 In conformity with its statutory mandate, the Authority reserves the right, at any time and in its sole discretion, to modify, rescind, delete, or otherwise change the provisions of the Regulations.
- 5301.3 The General Manager shall issue a District of Columbia Water and Sewer Authority (“DC WASA”) Procurement Manual setting forth guidelines and procedures to be followed consistent with these Regulations.
- 5301.4 The Board delegates to the General Manager the authority to develop, implement and enforce such policies and procedures, consistent with these Regulations, as deemed necessary or useful.
- 5301.5 The General Manager is responsible for recommending to the Board new procurement regulations or modifications to existing procurement regulations.
- 5301.6 If any provision in this chapter is deemed invalid, void or unenforceable by a court of competent jurisdiction, the chapter shall be construed as though the provision does not appear. Any such finding by a court of competent jurisdiction shall not affect the validity of any other provision, section, paragraph, or sentence of this chapter.

**5302 Full and Open Competition**

- 5302.1 Procurements shall be conducted using full and open competition, except as otherwise provided for in these Regulations.

**5303 Applicability**

- 5303.1 The Regulations apply to all procurements made by the Authority. In the case of a procurement funded with federal, state or local funds, the Regulations shall be applied to conform to the requirements of the funding source, except to the extent

that doing so would prevent compliance with the terms and conditions of other applicable federal, state, or local laws.

**5304 General Standards of Ethical Conduct**

5304.1 Authority employees involved in the procurement process shall conduct business impartially and in a manner above reproach, with preferential treatment for none. Authority employees shall strictly avoid any conflict of interest or the appearance of a conflict of interest in the procurement process.

5304.2 Any attempt by an employee, officer or agent to realize personal gain through employment with the Authority by conduct inconsistent with proper discharge of duties is a breach of ethical standards.

5304.3 Any attempt by a non-employee to influence any Authority employee to breach the standards of ethical conduct set forth in this Section is a breach of ethical standards.

5304.4 Any attempt by a Board member or alternate member to realize personal gain through the exercise of the duties or responsibilities of Board members or to influence any employee to violate the standards of ethical conduct set forth in this Section is a breach of ethical standards.

**5305 Ethics Sanctions**

5305.1 The Authority may take action against employees, officers and agents as well as others who violate any provision of §§ 5304-5308.

5305.2 Any employee, officer or agent who violates any provision of §§ 5304-5308 will be subject to discipline, up to and including termination of the relationship with the Authority.

5305.3 Any Board member or alternate member who violates any provision of §§ 5304-5308 will be subject to removal, suspension or termination in accordance with applicable law.

5305.4 Any effort made by or on behalf of a non-employee, including an offeror or contractor, to influence an employee to breach the ethical standards set forth in §§ 5304-5308 is prohibited and may be referred to appropriate authorities for civil enforcement or criminal prosecution.

5305.5 A violation by a contractor or subcontractor of any provision of §§ 5304-5308 constitutes a major breach of each Authority contract or subcontract to which the violator is a party. Additionally, the Authority may determine an offeror or contractor to be non-responsible, or may suspend or debar any offeror or contractor who violates or whose representative violates any provision of

§§ 5304-5308.

**5306 Conflict of Interest**

- 5306.1 No Authority employee, officer, board member or agent shall participate in or attempt to influence any procurement when the employee, officer, board member or agent knows or has reason to know:
- (a) The employee, officer, board member or agent, or any relative of an employee, officer, board member or agent has a financial interest pertaining to the procurement;
  - (b) A business or organization in which the employee, officer, board member or agent, or any relative of an employee, officer, board member or agent has a financial interest pertaining to the procurement; or
  - (c) The employee, officer, board member or agent or any relative of an employee, officer, board member or agent has an agreement or arrangement for prospective employment with a business or organization involved with the procurement.
- 5306.2 It is a breach of ethical standards for any employee to receive or attempt to realize personal gain or advantage, either directly or indirectly, as a result of their participation in any action related to any procurement. No employee, officer, board member or agent may solicit or accept, directly or indirectly, on his/her own behalf or on behalf of a relative, any benefit, such as a gift, gratuity, favor, compensation, offer of employment, or anything having more than a nominal monetary value from any person, or entity having or seeking to have a contractual, business, or financial relationship with the Authority.
- 5306.3 In the event an Authority employee, officer or agent, other than the General Manager, is offered or receives any benefit in violation of any provision of §§ 5304-5308 from any person or entity, the employee shall report the matter to the General Manager or designee who shall determine the disposition of the benefit. The failure to report such offer or benefit to the General Manager or designee is a breach of these ethical standards.
- 5306.4 In the event the General Manager, a Board member other than the Board Chair, or an alternate member receives any offer or benefit in violation of any provision of §§ 5304-5308 from any person or entity, the Board member, alternate member or General Manager shall report the benefit to the Board Chair who shall determine the disposition of the matter or benefit. In the event that the Board Chair receives any offer or benefit in violation of any provision of §§ 5304-5308 from any person or entity, the Board Chair shall report the benefit to the Vice Chair who shall determine the disposition of the matter or benefit.

**5307 Restrictions on Employment of Present and Former Employees**

5307.1 An Authority employee who participates in the selection of a contractor or participates in the approval process of a contract or contract modification or supervises contract implementation shall not be employed by the contractor in question with respect to the performance of the contract in which the Authority employee participated.

5307.2 An offeror, contractor or subcontractor shall not:

- (a) Employ for a period of eighteen (18) months after separation an Authority employee to work on an Authority project on which the employee directly worked. The General Manager may reduce this limitation period if it is determined that it is in the best interests of the Authority after review and recommendation by the General Counsel.
- (b) At any time after granting employment to any Authority employee who participated in the selection of the contractor or in the approval of a contract or contract modification with the contractor or the supervision of the contract implementation, allow such employee to work under the Authority contract resulting from the selection or approval;
- (c) Offer to perform work for the Authority premised on the hiring of an Authority employee to perform part of the work who may reasonably be expected to participate in the selection of that contractor, in the approval of a contract or contract modification with that contractor, or the supervision of contract implementation;
- (d) Perform work for the Authority under the supervision, direction or review of an Authority employee who was formerly employed by the contractor without notifying the Contracting Officer in writing;
- (e) Allow the relative of an Authority employee to work on an Authority project for which the employee has any direct responsibility or supervision;
- (f) Permit any person whose employment by the Authority was terminated by the Authority, other than pursuant to a reduction in force, to work on any Authority contract or project; or
- (g) Offer or grant to an Authority employee, officer, or agent or the relative of an Authority employee, officer, or agent directly or indirectly, any benefit such as a gift, gratuity, favor, compensation, offer of employment, or any other thing having more than nominal monetary value.



**5308 Organizational Conflict Of Interest**

5308.1 An organizational conflict of interest exists when an offeror or a contractor (prime contractor or subcontractor) has:

- (a) An unfair competitive advantage in a procurement as the result of access to nonpublic information about the procurement or a competing bidder; or
- (b) An incentive that renders it unable, or potentially unable, to provide impartial assistance or advice to the Authority.

5308.2 In an effort to ensure a fair procurement process and protect the interest of the Authority, a Contracting Officer will analyze a planned procurement to identify actual or potential organizational conflicts of interest as early as possible in the procurement process and determine if an actual or potential organizational conflict of interest can be effectively avoided or mitigated.

5308.3 A Contracting Officer may reject a bid or proposal if an organizational conflict of interest has not been eliminated, avoided or mitigated to the satisfaction of the Authority.

**5309 [RESERVED]****5310 Contracting Authority and Responsibilities**

5310.1 The Authority's Board, pursuant to D.C. Code §§ 34-2202.03(5), (6) and 2202.05(7), has the authority and responsibility to contract for goods and services including construction.

5310.2 The Board may establish contracting activities and delegate broad authority to manage the Authority's contracting functions.

5310.3 The Board delegates to the General Manager the authority, in compliance with these Regulations, to contract for goods and services, including construction, required by the Authority for its operations.

**5311 General Manager**

5311.1 The General Manager is designated as the Chief Contracting Officer for the Authority. The General Manager is authorized to enter into, administer, terminate and otherwise manage contracts subject to any approval thresholds that may be established by the Board.

5311.2 The General Manager shall determine the qualifications of Contracting Officers and may delegate contracting authority in whole or in part to one or more other Contracting Officers. Such delegation shall be in writing specifying the limits of

the authority granted.

**5312 Contracting Officers**

5312.1 Contracting Officers have only such authority as delegated to them pursuant to § 5311.2.

5312.2 Contracting Officers have discretion to determine the method of procurement, project delivery and type of contract to use for each requirement, unless this function is excluded from the delegation of the contracting authority.

5312.3 Contracting Officers shall determine responsive bids and responsible offerors. A responsive bid is a response to a solicitation which conforms in all material respects to the solicitation.

5312.4 A responsible offeror has the capability in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance.

**5313 Contracting Officer's Technical Representative**

5313.1 Contracting Officers may appoint in writing a Contracting Officer's Technical Representative ("COTR") to provide such management oversight and technical direction for a particular procurement or contract as the Contracting Officer shall determine is necessary or useful.

5313.2 The COTR shall maintain an arm's length relationship with the contractor. COTRs have no authority to modify any contract.

**5314 Ethics Officer**

5314.1 The General Manager shall designate an Ethics Officer for the Authority to provide guidance on ethical matters.

**5315-5319 [RESERVED]**

**5320 Contractor Debarment and Suspensions**

5320.1 The Authority has the authority to suspend or debar contractors for cause.

**5321-5329 [RESERVED]**

**5330 Methods of Procurement**

5330.1 Authority procurements shall be conducted using a method or combination of methods, which:

- (a) Serve the Authority's interest considering price, delivery, quality, effect on the Authority's operation and services, and other factors affecting the Authority's interests; and
- (b) Deal fairly with offerors and contractors.

5330.2 The Authority may use any of the following methods of procurement:

- (a) Sealed Bids;
- (b) Competitive Proposals;
- (c) Small Purchases;
- (d) Commercial Item Purchases;
- (e) Expedited Purchases;
- (f) Limited Competition Purchases;
- (g) Joint Procurements;
- (h) Rider Procurements;
- (i) General Services Administration Schedule Purchases;
- (j) Micro-Purchases; or
- (k) Unsolicited Proposals.

**5331 Competitive Procurement Methods**

5331.1 The sealed bid method includes publicizing the solicitation, issuing an Invitation for Bids ("IFB"), and the receipt of bids. The Authority may award a contract to the responsible bidder who submits the lowest responsive bid. The sealed bid method may be used if:

- (a) There is an adequate and realistic specification or purchase description available;
- (b) The award will be made on the basis of price and other price-related factors;
- (c) It is not necessary to conduct discussions with the responding offerors about their bids; and

- (d) There is a reasonable expectation of receiving more than one sealed bid.

5331.2 The competitive proposal method includes both one-step and two-step proposal processes.

- (a) The one-step process entails:

- (1) The publicizing of the solicitation;
- (2) The issuance of a Request for Proposals (“RFP”); and
- (3) The receipt of proposals.

- (b) The two-step process entails:

- (1) The publicizing of the solicitation;
- (2) The issuance of a Request for Qualifications (“RFQ”);
- (3) The receipt of Statements of Qualifications from interested offerors;
- (4) The issuance of an RFP to a shortlist of offerors that have responded to the RFQ and are deemed most qualified; and
- (5) The receipt of proposals.

- (c) Under either process, the Authority may negotiate with offerors and seek revised offers. This procurement method may include a Request for Information or an Expression of Interest before the RFP or RFQ is publicized.

- (d) In competitive proposal procurement, the Authority may award a contract to the offeror whose proposal is most advantageous to the Authority.

- (e) The competitive proposal method may be used when time permits the solicitation, submission, and evaluation of proposals in one or more steps and one or more of the following circumstances apply:

- (1) There is not a complete, adequate, and realistic specification or purchase description available;
- (2) The award will be made on the basis of criteria in addition to price or price-related factors;
- (3) It may be necessary to conduct discussions with the responding offerors about their proposals; or

- (4) There is a reasonable expectation of receiving more than one Statement of Qualifications and/or proposal.

- 5331.3 All architectural and engineering (“A/E”) services that are required to be performed by licensed, registered or certified professionals shall be procured on the basis of demonstrated competence and qualifications. After the A/E offeror has been selected, price shall be discussed. The Authority shall exclude an offeror from consideration if the parties cannot agree on a fair and reasonable price. This subsection shall not apply in the procurement of design-build services, or for any project delivery method in which the anticipated cost of A/E services is less than fifty percent (50%) of the anticipated cost of the project as a whole.
- 5331.4 The Authority may use multistep methods of procurement including, but not limited to, any combination of competitive methods such as the two-step sealed bidding and the advisory multi-step methods.
- 5331.5 The small purchases method is used for procurements with an estimated value less than the threshold established in the DC WASA Procurement Manual. Small purchases may be made considering price and the best interests of the Authority after seeking quotations from at least two sources.
- 5331.6 The small purchases method may be used for any purchases of commercial items.
- 5331.7 The small purchases method may be used for any purchases when time is of the essence (expedited purchases). Offers shall be sought from two or more sources and purchases may be made considering price and other factors.
- 5331.8 Competition may be limited to selected sources when it is determined that there are limited sources of supply to fulfill the Authority’s requirements.
- 5331.9 The Authority may use the following procurement methods with other agencies:
- (a) Joint Procurement: The Authority may participate in, sponsor, conduct, or administer a joint procurement agreement with one or more public bodies to increase efficiency or reduce administrative expenses.
  - (b) Rider Procurements: The Authority may purchase goods and services including construction if:
    - (1) A public body has entered into a contract for goods or services including construction according to general principles of competitive procurement; and
    - (2) The Authority is named or otherwise described in the list of agencies that may purchase under the contract.

- (c) General Services Administration Schedule Purchases: The Authority may purchase goods or services including construction under schedule contracts awarded by the General Services Administration.

## **5332 Exemptions**

5332.1 The following procurements may be made without competition and are not subject to the competitive requirements set forth in § 5331.

5332.2 Micro-purchases: Procurements at or under the threshold for micro-purchases established in the DC WASA Procurement Manual may be made without competition.

5332.3 Sole Source: Goods and services, including construction, that are available from only one vendor or contractor (sole source) may be purchased without competition. Circumstances where sole source purchasing is permitted include, but are not limited to:

- (a) Specific replacement parts or components for equipment;
- (b) Equipment upgrade and repair, repair services, or parts unavailable from any other source except the original equipment manufacturer or its designated service representative;
- (c) Upgrade to existing software, available only from the producer of the software who sells only on a direct basis;
- (d) When there is a need to standardize equipment, or to facilitate the interoperability of equipment or systems;
- (e) When there is substantial duplication of costs to the Authority that is not expected to be recovered through competition;
- (f) Utility services, when from only one source; or
- (g) Intellectual property rights that are owned or controlled by one source and made available through that source. These rights would include patents, copyrights, licenses, secret processes, material monopolies or other established rights that affect distribution of goods and services.

5332.4 Categorical Exemptions: The following categories of purchases are exempt from the competitive procurement methods and may be purchased without competition:

- (a) Purchase, rent or lease of land or other interest in real property;
- (b) Memberships, films, manuscripts, publications, educational services;

- (c) Personal property sold at an auction by a licensed auctioneer;
- (d) Personal property or services provided by another public entity, agency or Authority;
- (e) Legal services;
- (f) Research programs;
- (g) Advertisements in newspapers or other publications;
- (h) Intergovernmental agreements and cooperative agreements with other institutions where the primary purpose is not the purchase of goods, services or construction; and
- (i) Travel services.

5332.5      Emergency Procurements: Emergency Procurements may be made without competition. An emergency is a situation which creates an immediate need for goods or services, including construction, that cannot be met through normal procurement methods because the lack of these goods or services or construction would seriously threaten any of the following:

- (a) The health or safety of any person;
- (b) The preservation or protection of property;
- (c) The continuation of necessary governmental functions; or
- (d) The Authority's compliance with legal requirements.

5332.6      The General Manager, or designee may approve a non-competitive procurement on an emergency basis which does not otherwise comply with the requirements of the Regulations if the procurement is essential for:

- (a) Preventing or avoiding an imminent emergency; or
- (b) Responding to, mitigating or resolving an existing emergency condition.

5332.7      In case of an emergency procurement under this Section, a contractor may be given a verbal authorization by the Contracting Officer to proceed, provided that a written contract or modification is executed as soon thereafter as is reasonably practicable.

**5333 Unsolicited Proposals**

5333.1 The Authority will review unsolicited proposals and consider the feasibility of their implementation. An unsolicited proposal is one which:

- (a) Is innovative or unique;
- (b) Is independently originated and developed by the offeror;
- (c) Is prepared without the Authority's supervision;
- (d) Includes sufficient detail to permit a determination that the proposed product, services or work could benefit Authority's mission or allow it to meet its responsibilities; and
- (e) Is not an advance proposal for a known or anticipated Authority requirement that can be procured by competitive methods.

5333.2 Unsolicited proposals may be the basis of a competitive procurement if deemed to be in the best interest of the Authority.

5333.3 An offeror may designate portions of its proposal to be confidential if they include proprietary information or contain sensitive personnel information.

5333.4 An unsolicited proposal shall be returned to an offeror, citing reasons, when the proposal:

- (a) Does not meet the criteria in § 5333.1; or
- (b) Is not deemed to be advantageous to the Authority.

5333.5 Acceptance of an unsolicited proposal may be recommended to the General Manager, who may accept it or reject it.

**5334 Requests Before Soliciting Offers**

5334.1 Prior to publicizing a solicitation of offers, the Authority may, when applicable and in consideration of its best interests, publicize and issue Requests for Information or an Expression of Interest.

5334.2 The Authority may publicize the solicitation and issue Requests for Qualifications from prospective offerors before soliciting offers under any method of procurement. In such case, the Authority may limit its solicitation of offers only to firms that submit a response or only to those firms that submit a response and are deemed most qualified.



5334.3 If the IFB or RFP is issued only to selected firms, further publicizing the IFB or RFP is not required.

**5335 Dividing Procurements Prohibited**

5335.1 Procurements shall not be divided as a means to circumvent the competitive process, or to avoid the procedures applicable to procurements of greater value.

**5336-5339 [RESERVED]**

**5340 Contract Types and Project Delivery Methods**

5340.1 Contracts may be of any type or combination of types except as prohibited in § 5340.3. All contracts, except as provided in § 5332.7 for emergencies, shall be in writing.

5340.2 Each solicitation shall clearly indicate the type or types of contract that will be used for the specific procurement.

5340.3 The use of cost plus a percentage of cost contracts is prohibited.

**5341 Project Delivery Methods**

5341.1 The Authority may select and employ a project delivery method determined to be appropriate to the specific contract and to serve the Authority's interests.

**5342-5349 [RESERVED]**

**5350 Protests**

5350.1 The procedures in §§ 5351 through 5353 shall govern protests.

**5351 Filing**

5351.1 An offeror protesting an award decision is required to file the protest with the Contracting Officer within five (5) calendar days of when the protester knew or should have known of the facts and circumstances upon which the protest is based. Only bidders/proposers may file a protest.

5351.2 Protests against issues other than an award decision, including protests directed to the terms, conditions, or form of a proposed procurement action, shall be received by the Authority through delivery of the written protest to the Contracting Officer not later than ten (10) calendar days prior to the date established for opening of bids or receipt of proposals, except that an initial protest that arises under an amendment to a solicitation or invitation to bid shall be filed up to four (4) calendar days after the date the amendment was issued but in no case after the

time established for opening of bids or receipt of proposals. Such protests may be filed by any potential offeror.

**5352 Process**

5352.1 Solicitations issued by the Authority shall inform prospective offerors of the applicable protest and appeal process. For all other Authority procurement actions, the applicable protest and appeal process will be specified in the DC WASA Procurement Manual.

**5353 Continuation**

5353.1 During resolution of a protest, all procurement activities and, where applicable, contractor performance, shall continue unless the Contracting Officer determines there is a reason to suspend or delay all or part of the procurement activities and/or contractor performance.

**5354-5359 [RESERVED]**

**5360 Mandatory Contract Clauses**

5360.1 All Authority purchase contracts above the level of small purchases shall include clauses for “Changes”, “Termination for Convenience” and “Termination for Default”, in addition to clauses and provisions applicable to the type of solicitation or contract.

**5361-5369 [RESERVED]**

**5370 Business Development Programs**

5370.1 The Authority will employ reasonable efforts to increase the opportunity for participation of eligible local and small business enterprises in its contracting and procurement activities.

5370.2 Pursuant to the requirements applicable to the receipt of federal grants and other financial assistance, the Authority will implement programs designed to increase participation by federally-designated business enterprises.

5370.3 A Business Development Plan implementing these programs will be submitted by the General Manager for approval by the Board.

**5371-5379 [RESERVED]**

**5380 Protecting the Environment**

5380.1 It is a fundamental principle of the Authority that it will respect and manage our

finite natural resources. Accordingly, the Authority will plan and conduct its procurement as an environmental steward. The Authority recognizes that how it carries out its environmental stewardship will have effects on a regional and global scale.

**5381-5398 [RESERVED]**

**5399 Definitions**

5399.1 When used in the Regulations, the following words and phrases shall have the meanings ascribed:

**Bid** – An offer to furnish goods and services including construction in conformity with and in response to specifications, delivery terms and conditions, and other requirements included in an Invitation For Bids (IFB).

**Commercial Items** – Items sold to the general public in the course of normal business operations that are competitively priced and based on established catalogue or market prices. Commercial products may include corresponding services for the installation, repair or maintenance associated with the item.

**Contracting Officer** – The General Manager and any other employee designated by the General Manager, possessing written and express authority to bind the Authority in specified contract matters.

**Contracting Officer's Technical Representative (COTR)** – An employee appointed in writing by a Contracting Officer to perform specified technical and administrative functions as are detailed in the appointment.

**Construction** – Activity that involves the construction, alteration, or repair (including dredging, excavating, and painting) of buildings, structures, or other real property. This activity is distinguished from manufacturing, furnishing of goods, or services and maintenance work. Construction does not include work from which the final product is exclusively personal property.

**Ethics** – Practices or requirements pertaining to appropriate conduct or motives that conform to professional standards of conduct.

**Expression of Interest** – A process used to identify potential offerors that might be interested in an upcoming procurement, and/or invite comment from companies with expertise and experience in the matter that will benefit the development of the specifications or statement of work.

**Full and Open Competition** – A manner of conducting procurements in which all responsible sources are permitted to compete.

**Goods** – Physical (tangible) products, including but not limited to, supplies, equipment,

materials, printing, information technology hardware and software, and commodities.

**Intergovernmental Agreement** – An agreement by two or more public bodies, by memorandum of understanding, memorandum of agreement, contract or agreement, to exercise any powers that at least one of the parties possesses, provided that the primary purpose of the agreement is not the purchase of goods, services or construction.

**Invitation for Bids (IFB)** – The solicitation document used for competitive sealed bidding for the purchase of goods, services and construction.

**Offeror** – A person or entity that submits a bid or proposal to the Authority, generally in response to an IFB or RFP.

**Procurement** – The process by which the Authority acquires goods and services including construction, by and for its use through purchase or lease. Procurement begins at the point when Authority determines that an established need shall be met through contracting and includes the description of requirements to satisfy Authority needs, solicitation and selection of sources, award of contracts, contract financing, contract performance, contract administration, and those technical and management functions directly related to the process of fulfilling Authority needs by contract.

**Project Delivery Method** – The contracting approach selected to allocate risk and responsibility between a contractor and the Authority and to organize the contractor's work in connection with services, design, construction, operation, maintenance or supply. The Contracting Officer shall determine the appropriate project delivery method and may select any that best serves the Authority's interests, including but not limited to: design-bid-build; agency construction management; at-risk construction management; design-build; design-build-operate-transfer; design-build-operate-maintain; design-build-finance-operate; outsourcing; and public/private partnerships.

**Proposal** – An offer to furnish goods or services, including construction, in response to a Request for Proposals (RFP) that, if accepted, would bind the offeror to perform the resultant contract.

**Protest** – A written, timely objection to a solicitation or contract award submitted by a prospective or actual bidder/proposer whose direct economic interest would be affected by the award or failure to award a contract.

**Public Body** – Any state, the District of Columbia, any unit or political subdivision or component of any of the foregoing and any agency of the United States Government.

**Relative** – A spouse, parent, parent-in-law, child, step-child, sister, brother, brother-in-law, sister-in-law, step-parent, daughter-in-law, son-in-law, niece, nephew, first cousin, grandparent or grandchild, or any other related or unrelated individual that resides in the same household as the employee, officer, board member or agent.

**Request for Information (RFI)** – A process preliminary to a solicitation requesting information from potential vendors of goods or services, including construction, about their products and services.

**Request for Proposals (RFP)** – The solicitation document used in the competitive proposal process in which proposals are evaluated on the basis of technical standards, price and other criteria and in which negotiations with proposers prior to final selection and award of a contract is permissible.

**Request for Qualifications (RFQ)** – The solicitation document used to obtain Statements of Qualifications from prospective offerors in advance of the issuance of an Invitation for Bids or a Request for Proposals.

**Services** – Any activity that directly engages the time and effort of a contractor whose primary purpose is to perform an identifiable task rather than to furnish goods. Insurance is a service. Services also include consultation, advice, design and other work performed by either professional or non-professional personnel whether on an individual or organizational basis. This term shall not include employment agreements or collective bargaining agreements.

**Solicitation** – Any request to submit qualifications, expressions of interest, bids, proposals, or quotations to the Authority. A Solicitation under sealed bid procedures is called “Invitations for Bids.” A Solicitation under competitive proposal procedures is called a “Request for Proposals” under one-step procurement, and is called “Request for Qualifications” and “Request for Proposals” under a two-step procurement. Small purchase solicitations may require submission of either a quotation or an offer (bid or proposal).

**Statement of Qualifications** – The submission of qualifications by an offeror in response to a Request for Qualifications.